

In the High Court of Travancore-Cochin.

~~23-10-1953~~ 1953

Before ~~Present~~

The Hon'ble Shri K.T. Koshi, Chief Justice,
and

The Hon'ble Shri A.S. Menon, Judge.

A. S. No. 38 of 1950.

O.S. No. 136 of 1121 on the file of the District Court of Anjikaimal.

Appellant - defendant.

Balakrishna Narar son of Kunjakutty Nara, President, Cochin Devaswam Board on behalf of Cheranalloor Bhagavathy Devaswam.

By advocate Shri K. Achutha Menon and P.A. Achan.

Res onced - Plaintiff.

Bama Pisharodi nee Nargh of Narayana Pisharodi, Padinjare Pisharodi, Chittoor Desam, Cheranalloor Village, Penayannur Taluk.

By advocate Shri V. Parameswara Menon.

This appeal coming on for final hearing on 19-10-1953 and having stood over for consideration till ²³⁻¹⁰⁻⁵³ ~~this day~~ the court delivered the following

Judgment.

(Delivered by H.S. Menon, J.)

O.S. No. 136 of 1121 of the District Court of Anjikaimal from which this appeal arises was a suit for

"a perpetual injunction restraining the Cochin Government, representing the Cheranalloor Bhagavathy Devaswam, from proceeding with the action initiated under the Revenue Recovery Act for recovery of alleged arrears of land revenue claimed to be due by the plaintiff's land and for refund to him with interest at 6% per annum of a sum of Rs. 823-6-0 out of Rs. 922-14-0 deposited by him on 2-9-1121 under protest to protect his rights therein"

on the ground that the suit property belonged to the plaintiff's land and was held on *bandaravasa varugetton* tenure. The lower court upheld the plaintiff's contention and awarded a decree in terms of the plaint.

2. The history of the property is traced as follows in the judgment of the court below:-

History

"The suit property, owned and enjoyed by Cheruvilil Padmanabhar Panikkar in Pandaravake Varupattam and settled as such in his name in the Settlement of 1080, was assigned after his death by his heirs Narayana Panikkar and others by deed No. 1873 of 1099 of the Ernakulam Registry to Padijare Pisharath Govinda Pisharodi who in turn assigned it by deed No. 1287 of 1101 of the same registry to Kesava Pisharodi and three others. In the partition deed effected as between the heirs of the latter by deed No. 1916 of 1120 of the same registry, it stands allotted to the share of plaintiff's tavezhi and remains in the possession and enjoyment of the plaintiff on behalf of his tavezhi".

The document of 1099 is Exhibit G, of 1101 is Exhibit K and of 1120 is Exhibit H. Exhibit F dated 25-10-1092 is the patta granted to Narayana Panikkar and Exhibit J dated 11-10-1099 is the subsequent patta issued in favour of Govinda Pisharodi.

3. According to the defendant the suit property belongs to the Cheranellur Bhagavathi Devaswam in jama and the rights of the plaintiff is that of a karam tenant, the current karam and ethir deeds being Exhibits V and VI of 1080. It is true that at the Settlement of 1080 the property was registered as a verupattam holding and Exhibits F and J have been issued on that basis. As held by us in A.S.No. 18 of 1950 the issue of a patta like Exhibit F cannot in any way conclude the question of title as between the landlord and his tenant. 35 Cochin 684, a judgment in which all the previous cases have been surveyed, summarizes the position as follows:-

"The object of the Settlement being to fix the assessment leviable on puzavake lands, the Settlement Proclamation does not contemplate adjudication of private rights.....except for the purposes stated in the Proclamation the officers mentioned in section 24 have no right to decide the question of title to lands between the Government and its subjects and the private rights of parties cannot be affected by any order passed under section 24 of the Settlement Proclamation".

4. The only question therefore that really arises for consideration in this appeal is whether the suit property is covered by the karam and ethir deeds, Exhibits V and VI. The description of the property as given in the plaint is:

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the significant circumstance as far as the plaintiff's contention in this case is concerned is the fact that the second defendant in O.S.No. 290 of 1992 was Narayana Penikker, the person in whose favour exhibit F was granted, that he chose to remain silent and that he did not advance any of the contentions which form the foundation of the present plaint.

8. Exhibit B is one of the receipts showing payment of michevaram. The lower court has refused to draw any inference from the receipt on the ground that it has been "over-written". The receipt was in the possession of the plaintiff's lawyer and the defendant cannot be blamed for the "over-writing". Exhibit XIV (No. 74) contains the counterfoil of the receipt and the counterfoil shows no such "over-writing" or any alteration whatsoever.

9. In these circumstances we cannot possibly uphold the plaintiff's contention on the basis of the Settlement Registry, the subsequent issue of a patna, and the description of the property in Exhibit T (item 22). There can be no doubt that the suit property which is delineated on the plan Exhibit A is the area of property covered by Exhibits V and VI, and that the appeal has to be allowed.

* We allow the appeal with costs.

23rd October 1953.

Ed./K.L. Koshi, Chief Justice.

Ed./M.S. Menon, Judge.

(True copy)

Compared by
K.P. Ram

Manager
Assistant Registrar
for Registrar.

Rs. 38/50

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